



## CHAPTER 5.

An Act for sanctioning and confirming a Deed of Arrangement ascertaining and determining the Estates Rights and Interests of the several persons interested in the residuary Real and Personal Estate of George Ashburner Esquire deceased and for other purposes.

A.D. 1889.

[26th August 1889.]

**W**HEREAS George Ashburner late of Tilgate in the county of Sussex esquire deceased duly made and executed his will dated the twenty-eighth day of November one thousand eight hundred and sixty-seven and thereby after appointing his wife Katharine Ashburner his brother-in-law William Ashburner Forbes and his son-in-law John Hennings Nix (therein called John Nix) executors and executrix thereof and making certain specific bequests devised his Tilgate estate and the hereditaments therewith occupied by him situate in the parishes of Worth and Slaugham in the county of Sussex unto the said Katharine Ashburner and her assigns for her life without impeachment of waste with remainder to the said William Ashburner Forbes and John Hennings Nix their executors administrators and assigns during the life of his daughter Sarah Nix the wife of the said John Hennings Nix without impeachment of waste upon trust to pay the rents and profits thereof as and when the same should become due and not by way of anticipation to the said Sarah Nix for her separate use with remainder to such use or uses for such estates and in such manner for the benefit of all or any one or more of the children or other issue of the said Sarah Nix (such other issue to be borne in her lifetime) as she by her will should appoint and in default of appointment to the use of her child if only one or of her children in equal shares if more than one in fee simple with cross executory limitations of the shares original and accruing of each of the same children in the event of his or her dying under the age of twenty-one years without having been married to the

Preamble of  
the will of  
George  
Ashburner  
dated 28th  
November  
1867.

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use of the others in equal shares and the other in fee simple And the said testator thereby empowered his said wife and the said Sarah Nix during such period as they respectively should be in possession as beneficial tenants for life under the limitations therein-before contained from time to time by deed to grant such leases as therein mentioned of his said hereditaments therein-before devised or any part thereof (except his principal dwelling-house in Tilgate aforesaid and the outbuildings garden and pleasure grounds thereto belonging) and as to his principal dwelling-house at Tilgate aforesaid and the outbuildings garden and pleasure grounds thereto belonging it was his wish that the same premises should not be leased but that the same should be occupied by his said wife and daughter respectively during their beneficial possession thereof under the limitations therein-before contained And after bequeathing an annuity of one hundred pounds as therein mentioned (which annuity has since determined) the said testator thereby devised all the real estate not therein-before devised or over which he should have any disposing power at his decease (except estates vested in him as trustee or mortgagee) and bequeathed the residue of the personal estate to which he should then be entitled unto and to the use of the said Katharine Ashburner William Ashburner Forbes and John Hennings Nix their heirs executors administrators and assigns respectively upon such trusts for sale and conversion and getting in as therein mentioned :

And the said testator thereby empowered his trustees or trustee to postpone for such period as to them or him should seem expedient the sale of all or any part of his residuary real estate and the conversion of such parts of his residuary personal estate as should consist of stocks funds shares or securities of any description whatsoever and also to let from year to year or for any term not exceeding twenty-one years in possession at the best rent and to manage at their discretion the unsold real estate and also any real estate which might be purchased under the trusts therein-after contained but the said testator declared that from the time of his decease such unsold and unconverted real and personal estate and the rents interest and yearly produce thereof respectively should be subject to the trusts and provisions therein-after contained concerning the money to arise therefrom and concerning the income of such money and that such unsold real estate should be considered as converted in equity from the time of his decease for the purpose of such trusts and provisions and the said testator directed his trustees or trustee for the time being to invest the money to arise from the real and personal estate to be sold

and gotten in as aforesaid in the names or name of his said trustees or trustee in or upon any of the Government stocks funds or securities of Great Britain or of any of the colonies thereof or on mortgage of freehold or copyhold estates in England or Wales and not elsewhere or upon the purchase of real estates in England but such real estates should be treated as personal estate for the purposes of the trusts of his said will with power to vary investments and he declared that his said trustees or trustee should stand possessed of the moneys to arise as aforesaid and the stocks funds and securities wherein the same should be invested (which moneys stocks funds and securities were therein-after designated his trust funds) upon trust that his said trustees or trustee should out of the income of the said trust funds pay to his said wife yearly during her life such a sum as would together with the income which she would receive by virtue of her marriage settlement and the property thereby settled but without taking into account the income of the estate and premises at Tilgate aforesaid therein-before devised to his said wife for her life or her enjoyment thereof make up the full yearly sum of four thousand pounds and in case any doubt should arise as to the amount of the income received by his said wife under her marriage settlement his trustees or trustee should have power in each year to determine the amount according to the best information they or he could procure and their or his determination should be absolutely final and binding upon all parties And after the death of his said wife if the said Sarah Nix should survive his said wife his said trustees or trustee should out of the said annual proceeds of his said trust funds pay to the said Sarah Nix during her life the yearly sum of four thousand pounds for her separate use without power of anticipation And after directions as to the time of payment of the said yearly sums respectively the said testator directed that the said yearly sums should be paid to his said wife and daughter respectively out of the income of his said trust funds with power in case of deficiency for payment of the said yearly sums respectively of the income of any one year to resort to the surplus and accumulations of the income of any other year during the life of such of them his said wife and daughter respectively as should be entitled to such arrears but not so as to charge with such arrears the corpus of his said trust funds or the income thereof after the death of the annuitant in the case of whose annuity such deficiency should have occurred And the said testator directed that his said trustees or trustee should stand possessed of all the residue and surplus of the income of his said trust funds during the lives of his said wife and the said Sarah

A.D. 1889. Nix and the life of the survivor of them after and subject to the payment thereof of the yearly sums therein-before bequeathed to his said wife and daughter upon trust to accumulate the same in manner therein mentioned but so that the said accumulation should not be carried beyond the term of twenty-one years from his death and subject to the said yearly payments to his said wife and the said Sarah Nix and to the trusts for accumulation aforesaid the said testator declared that his said trustees or trustee should stand possessed of his said trust funds and of the accumulations therein-before directed and all the residue of his real and personal estate and the income thereof upon trust for all or any or such one or more exclusively of the other or others of the children and remoter issue of the said Sarah Nix (including grandchildren or more remote issue born in her lifetime) for such interests in such proportions and in such manner in all respects as the said Sarah Nix should by will whether sole or covert appoint and in default of and subject to such appointment upon trust for all the children equally as tenants in common if more than one or for the only child (if but one) of the said Sarah Nix who either before or after her death being sons or a son should attain the age of twenty-one years or being daughters or a daughter should attain that age or marry under that age but no child in whose favour an appointment should be made should participate in the unappointed part of the said trust premises without bringing the appointed share into hotchpot And if no child of his said daughter being a son should attain the age of twenty-one years or being a daughter should attain that age or marry then the said testator declared that the whole of his said last-mentioned trust funds subject to the trusts aforesaid should go in the same manner in all respects as if he had died intestate in respect thereof and without leaving a wife or any child or remoter issue or any brother of the half-blood or any issue or descendant of such last-mentioned brother him surviving And the said testator empowered his said trustees or trustee to apply all or any part of the income of the share or shares to which each or any infant child or issue of the said Sarah Nix should be entitled or contingently entitled in possession by virtue of any appointment or otherwise under the trusts aforesaid in or towards the maintenance and education or otherwise for the benefit of such child or issue :

Death of  
testator on  
13th June  
1869.

And whereas the said testator died on the thirteenth day of June one thousand eight hundred and sixty-nine without having revoked or altered his said will and the same was on the seventh day of August one thousand eight hundred and sixty-nine proved in the principal registry of the court of probate by the said Katharine

Ashburner and John Hennings Nix liberty being reserved of making the like grant to the said William Ashburner Forbes : A.D. 1889.

And whereas the said will was on the thirteenth day of June one thousand eight hundred and seventy-three proved in the principal registry aforesaid by the said William Ashburner Forbes :

And whereas the said testator left him surviving his wife the said Katharine Ashburner and his said daughter Sarah Nix the wife of the said John Hennings Nix and no other children nor any issue of a deceased child : Testator's widow and only daughter surviving.

And whereas the said Katharine Ashburner Sarah Nix and John Hennings Nix are all still living and the said Sarah Nix is of the age of forty-three years and upwards :

And whereas there has been issue of the said Sarah Nix four children and no more namely John Ashburner Nix who was born on the first day of July one thousand eight hundred and sixty-six Katharine Forbes Nix who was born on the twenty-seventh day of July one thousand eight hundred and sixty-seven Caroline Julia Nix who was born on the second day of October one thousand eight hundred and sixty-nine and Charles George Ashburner Nix who was born on the twenty-fifth day of August one thousand eight hundred and seventy-three all of whom are now living : Issue of testator's daughter.

And whereas the said testator was at the time of his death possessed of real and personal estate of large value : Testator's personal estate.

And whereas on the seventeenth day of April one thousand eight hundred and seventy-one a Bill was filed in the High Court of Chancery in England by the said Katharine Ashburner as plaintiff against the said John Hennings Nix Sarah Nix John Ashburner Nix Katharine Forbes Nix Caroline Julia Nix and William Ashburner Forbes as defendants (the said Charles George Ashburner Nix being subsequently added as a party by order dated the sixteenth day of March one thousand eight hundred and seventy-four) and by the said Bill it was prayed (amongst other things) that the trusts of the will of the said testator might be carried into execution and that his real and personal estate might be administered by and under the decree of the said Court and on the sixth day of May one thousand eight hundred and seventy-one a decree was made in the said suit whereby it was declared that the trusts of the said will ought to be performed and carried into execution and certain accounts and inquiries were directed to be taken and made : Suit of Ashburner v. Nix.

And whereas the general residuary estate of the said testator with the accumulations thereof consisted on the thirty-first Particulars of residuary

A.D. 1889. December one thousand eight hundred and eighty-eight of the particulars following (that is to say) :—  
 estate on 31st December 1888.

£294,750	0	0	Invested on mortgage of freehold and copyhold estates and a reversionary estate :
£15,000	0	0	Caledonian Railway Consolidated Stock :
£100,021	17	11	2l. 15s. per cent. Consolidated Stock :
£6,930	0	0	Natal Consolidated 4l. per cent. Stock :
£20,000	0	0	Victorian Government 6 per cent. Debenture Public Loan Bonds (1865) :
200,000			Rupees Registered Stock 4½ per cent. Indian Government Loan 1872 :
£8,637	16	11	Balance standing to the credit of the executors at their bankers :
£6,500	0	0	Invested in the purchase of the Tilgate Cottage Estate :
£24,577	6	0	Invested in the purchase of the Tilgate Forest Lodge Estate :
£2,500	0	0	Invested in the purchase of a freehold estate at Slaughan adjoining the Tilgate Estate :

And the aggregate value thereof considerably exceeds the sum of four hundred and fifty thousand pounds :

Income for year ending 31st December 1888.

And whereas the income of the said estate for the year ending the thirty-first day of December one thousand eight hundred and eighty-eight was the sum of sixteen thousand pounds or thereabouts :

And whereas the annual sum from time to time paid to the said Katharine Ashburner under the said will has never exceeded in any year the sum of two thousand five hundred pounds or thereabouts :

Persons who have beneficial interests in residuary estate.

And whereas the said Katharine Ashburner Sarah Nix John Ashburner Nix Katharine Forbes Nix Caroline Julia Nix and Charles George Ashburner Nix and any future children and issue of the said Sarah Nix are the only persons who have or can have any beneficial interest in the residuary real and personal estate of the said George Ashburner :

And whereas questions have arisen whether according to the true construction of the said will the income to arise from the testator's residuary real and personal estate and the accumulations thereof between the determination of the period of accumulation and the death of the said Sarah Nix after providing for the annuities bequeathed by the said will were effectually disposed

of thereby and if so disposed of then in what shares and to or for the benefit of what persons the same ought to be paid or applied: A.D. 1889.

And whereas the said Katharine Ashburner Sarah Nix John Ashburner Nix and Katharine Forbes Nix are respectively desirous and it would be for their benefit and the benefit of the said Caroline Julia Nix and Charles George Ashburner Nix and any such future children and issue as aforesaid that the rights and interests of the said Sarah Nix and her children and issue respectively in the residuary real and personal estate of the said George Ashburner and the income thereof should be ascertained and determined to the extent and in manner provided for by the deed of arrangement a copy of which is annexed hereto by way of schedule:

And whereas by an order of the said Court made in the said suit on the first day of May one thousand eight hundred and eighty-nine upon the application of the said John Hennings Nix Sarah Nix John Ashburner Nix and Katharine Forbes Nix the judge being of opinion that it would be for the benefit of the infant defendants the said Caroline Julia Nix and Charles George Ashburner Nix it was ordered that the applicants and the said Katharine Ashburner William Ashburner Forbes Caroline Julia Nix and Charles George Ashburner Nix be at liberty to apply to Parliament for an Act for ascertaining and determining the estates rights and interests of the several persons interested in the real and personal estates of the said testator George Ashburner and in particular for the purposes in such order mentioned being the purposes expressed in the Bill for this Act as originally introduced into Parliament and it was ordered that the draft of a Bill for the purposes aforesaid be settled by the judge and it was ordered that the costs of all parties to the said application and consequent thereon be costs in the said cause:

And whereas by the certificate dated the tenth day of May one thousand eight hundred and eighty-nine of the chief clerk to his Lordship Mr. Justice Stirling made in the said suit it was certified that the draft of a Bill to be submitted to Parliament being the Bill for this Act had been settled and approved by the judge as directed by the said order of the first day of May one thousand eight hundred and eighty-nine, and that such draft is identified by the signature of the chief clerk to the memorandum in the margin of the first page thereof and that the several instruments facts and events recited in the preamble of such draft before the recital of the said certificate had been proved in the said action:

A.D. 1889.

And whereas the said certificate was filed in the filing and record department of the central office of the Supreme Court of Judicature on the thirteenth day of May one thousand eight hundred and eighty-nine :

Wherefore Your Majesty's most dutiful and loyal subjects Katharine Ashburner William Ashburner Forbes John Hennings Nix Sarah Nix John Ashburner Nix Katharine Forbes Nix Caroline Julia Nix and Charles George Ashburner Nix do most humbly beseech Your Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :

Short title.

1. This Act may be cited as the Ashburner Estate Act 1889.

Confirmation of deed of arrangement.

2. The deed of arrangement annexed hereto by way of schedule shall be and the same is hereby sanctioned and confirmed and shall be carried into execution accordingly and the several provisions thereof shall be as valid and effectual and shall bind the several persons who are herein-after declared to be bound by this Act in the same manner as if the said several provisions respectively had been hereby enacted.

General saving clause.

3. Saving to the Queen's most Excellent Majesty Her heirs and successors and to all and every persons or person bodies and body politic and corporate and their respective heirs successors executors and administrators all such estate right title interest claim and demand whatsoever of in to or out of the residuary real and personal estate of the said George Ashburner or the income thereof or the accumulations thereof or any part thereof respectively as they every or any of them would have had or enjoyed or been entitled to if this Act had not been passed.

Exceptions from saving clause.

4. The following persons and all persons claiming under them any estate or interest in the said residuary real and personal estate or the income thereof or the accumulations thereof or any part thereof respectively are excepted out of the general saving herein-before contained and accordingly are the only persons bound by this Act to wit :—

Katharine Ashburner ;  
 William Ashburner Forbes ;  
 John Hennings Nix ;  
 Sarah Nix ;  
 John Ashburner Nix ;  
 Katharine Forbes Nix ;



Caroline Julia Nix ;

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Charles George Ashburner Nix ;

and any other children or issue of the said Sarah Nix who may come into existence after the passing of this Act and any persons or person herein-after to become trustees or a trustee of the said will.

5. This Act shall not be a public Act but shall be printed by the several printers to the Queen's most Excellent Majesty duly authorised to print the statutes of the United Kingdom and a copy thereof so printed by any of them shall be admitted as evidence thereof by all judges justices and others.

Queen's  
printers'  
copies to be  
admitted as  
evidence.

A.D. 1889.

SCHEDULE referred to in the foregoing Act.

THIS INDENTURE made the 22nd day of July 1889 between KATHARINE ASHBURNER of San Remo in the Kingdom of Italy widow of the first part SARAH NIX the wife of John Hennings Nix of Tilgate in the county of Sussex esquire of the second part JOHN ASHBURNER NIX of Tilgate aforesaid esquire of the third part KATHARINE FORBES NIX of the same place spinster of the fourth part CAROLINE JULIA NIX of the same place spinster and CHARLES GEORGE ASHBURNER NIX of the same place respectively infants by the said John Hennings Nix father of the fifth part and WILLIAM ASHBURNER FORBES of Great Malvern in the county of Worcester esquire and the said JOHN HENNINGS NIX of the sixth part.

WHEREAS under and by virtue of the will dated the twenty-eighth day of November one thousand eight hundred and sixty-seven of George Ashburner late of Tilgate in the county of Sussex esquire deceased the several persons parties to these presents other than the said William Ashburner Forbes and John Hennings Nix are entitled to divers beneficial estates and interests in the residuary real and personal estates of the said testator :

And whereas the said Katharine Ashburner William Ashburner Forbes and John Hennings Nix are the trustees of the said will :

And whereas the several persons parties to these presents are desirous that the estates and interests of the persons beneficially entitled to the said residuary real and personal estates in the same respectively should be ascertained and determined to the extent and in manner herein-after appearing :

And whereas a Bill has been presented to Parliament for the purpose of obtaining an Act sanctioning and confirming these presents :

Now this indenture witnesseth that in pursuance of the said desire it is hereby agreed and declared by and between the said several parties to these presents as follows (that is to say) :—

1. These presents are conditional upon the sanction of Parliament being obtained thereto during this present session and if such sanction shall not be obtained these presents shall become void and of no effect ;
2. From and after the passing of the Act of Parliament sanctioning this agreement the trust in the said will of the said George Ashburner contained for the accumulation of the surplus income of the moneys stocks funds securities and other property for the time being constituting or representing the residuary real and personal estate of the said George Ashburner (all of which with the present accumulations thereof are herein referred to as the trust funds) shall absolutely cease and determine ;
3. The said Katharine Ashburner William Ashburner Forbes and John Hennings Nix or others the trustees or trustee for the time being of the said will (herein-after called "the trustees") shall out of the income

of the trust funds after payment thereout of the yearly sum by the said will directed to be paid to the said Katharine Ashburner pay to the said Sarah Nix during her life for her separate use without power of anticipation an annuity of 4,000*l.* to be in substitution for the annuity of like amount by the said will directed to be paid to her and to commence from the 1st day of July 1889 and to be paid by equal half-yearly payments on the 1st day of January and the 1st day of July in each year the first of such payments to be made on the 1st day of January 1890 ;

A.D. 1889.

4. The trustees shall pay the said annuity out of the income of the trust funds with power in case of deficiency of the income of any one year to resort to the surplus of the income of any other year during the life of the said Sarah Nix but neither the said annuity nor any arrears thereof shall be chargeable on the corpus of the trust funds or on the income thereof after the death of the said Sarah Nix ;
5. The said Sarah Nix shall so exercise the power of appointment by the said will given to her over or in respect of the trust funds so that the shares of the said John Ashburner Nix Katharine Forbes Nix Caroline Julia Nix and Charles George Ashburner Nix respectively in the corpus of the trust funds shall not be less in amount or value than the respective sums following (that is to say):—As to the said John Ashburner Nix the sum of 160,000*l.* As to the said Katharine Forbes Nix the sum of 50,000*l.* As to the said Caroline Julia Nix the sum of 50,000*l.* And as to the said Charles George Ashburner Nix the sum of 50,000*l.* ;
6. In case but for these presents and the provisions herein contained any of them the said John Ashburner Nix Katharine Forbes Nix Caroline Julia Nix and Charles George Ashburner Nix would either by virtue of or in default of any exercise by the said Sarah Nix of her said power of appointment become entitled to a smaller share in the corpus of the trust funds than the share to which he or she ought to become entitled under the provisions herein-before contained then the deficiency shall be made good by and out of the other shares whether of children or issue of the said Sarah Nix therein rateably and in proportion to the amount or value thereof respectively but so that no share shall by the operation of this present clause be reduced below the amount or value by the last preceding clause hereof fixed as the minimum amount or value thereof ;
7. The surplus income during the life of the said Sarah Nix (after payment of the said yearly sum payable to the said Katharine Ashburner and of the said annuity of 4,000*l.*) of the trust funds shall from and after the passing of the said Act be payable or applicable to or for the benefit of the said John Ashburner Nix Katharine Forbes Nix Caroline Julia Nix and Charles George Ashburner Nix and any other children of the said Sarah Nix who may hereafter be born in the shares in which by virtue of the said will and of these presents they shall be actually or presumptively entitled to the corpus of the trust funds ;

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8. All costs charges and expenses incurred in or about or preliminary to the preparation and execution of these presents and the obtaining and passing of the Act sanctioning the same shall be paid by the trustees out of any moneys from time to time in their hands forming part of the trust funds and for the purpose of paying such costs charges and expenses or any of them it shall be lawful for them to convert into money any part of the trust funds.

IN WITNESS WHEREOF the said parties have hereunto set their hands and seals the day and year first above written.

KATHARINE ASHBURNER	(L.S.)	KATHARINE F. NIX	(L.S.)
SARAH NIX	(L.S.)	JOHN H. NIX	(L.S.)
JOHN ASHBURNER NIX	(L.S.)	WILLIAM A. FORBES	(L.S.)
		JOHN H. NIX	(L.S.)

Signed sealed and delivered by the above-named Sarah Nix John Ashburner Nix and Katharine Forbes Nix in the presence of

HENRY MARKBY Sol<sup>r</sup>  
57 Coleman Street  
London E.C.

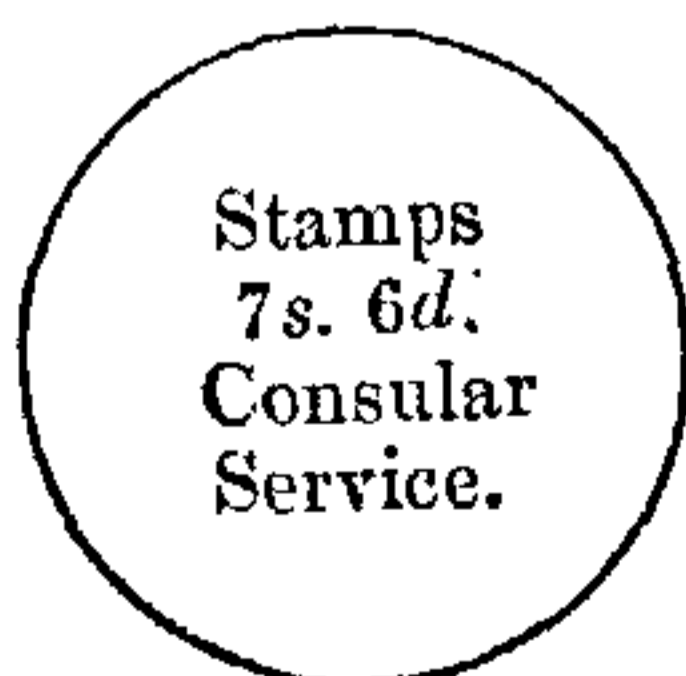
F. R. WARREN  
99 Great Russell St  
London  
Solicitor.

Signed sealed and delivered by the above-named Katharine Ashburner in the presence of

JOHN CONGREVE  
British Vice Consul  
San Remo Italia.

F. A. CURTIS  
Bel Respiro San Remo  
Gent<sup>n</sup>

BERTRAM R. WARREN  
99 Great Russell Street London  
Gent<sup>n</sup>



[52 & 53 VICT.] *Ashburner Estate Act, 1889.*

[CH. 5.]

Signed sealed and delivered by the above-named William Ashburner Forbes in the presence of A.D. 1889.

F. R. WARREN.

Signed sealed and delivered by the above-named John Hennings Nix in the presence of

THOMAS MARKBY

Solicitor

57 Coleman Street

London E.C.

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FOR

T. DIGBY FIGOTT, Esq., the Queen's Printer of Acts of Parliament.

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